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4 Counsel to the Fee Examiner  
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8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 In re  
12 PG&E CORPORATION,  
13 - and -  
14 PACIFIC GAS AND ELECTRIC  
COMPANY,  
15 Debtors.  
16

- 17 ☐ Affects PG&E Corporation  
18 ☐ Affects Pacific Gas and Electric Company  
19 ☒ Affects both Debtors

20 \* All papers shall be filed in the Lead Case,  
21 No. 19-30088 (DM)

Bankruptcy Case  
No. 19-30088 (DM)  
(Lead Case)  
(Jointly Administered)

Chapter 11

**REPLY IN SUPPORT OF FEE  
PROCEDURES MOTION  
(DOCKET NO. 3950)**

Date: October 7, 2019  
Time: 1:30 p.m. PST  
Place: United States Bankruptcy Court  
Courtroom 17  
16<sup>th</sup> Floor  
San Francisco, CA

Judge: Hon. Dennis Montali

22 **I. INTRODUCTION**

23 This is a reply brief in support of the Fee Examiner's Motion to Approve Fee Procedures  
24 [Docket No. 3950, Entered September 19, 2019, the "Fee Procedures Motion"], as permitted by  
25 the Court's bench ruling at the initial hearing on this matter on October 7.

26 By way of executive summary, all issues save one have been resolved by way of a  
27 "Revised Protocol" to be filed concurrently with this Reply. The one issue requiring further  
28 attention concerns non-working travel. The Fee Examiner agrees with the Court's Tentative

1 Ruling (setting a two-hour cap). Other parties reject the Tentative Ruling. The Fee Examiner asks  
2 the Court to adopt the Tentative Ruling.

3 Three responsive pleadings to the Fee Procedures Motion were filed:

- 4 1. “Retained Professionals’ Joint Response” [Retained Professionals’ Joint Response to  
5 Motion to Approve Fee Procedures and Fee Examiner Protocol, Docket No. 4064,  
6 Entered October 1, 2019].
- 7 2. “Milbank Response” [Response of Millbank LLP, Counsel to the Official Committee  
8 of Unsecured Creditors, to the Fee Examiner’s Motion for Approval of Fee Procedures,  
9 Docket No. 4050, Entered October 1, 2019].
- 10 3. “U.S. Trustee’s Response” [U.S. Trustee’s Response to Motion to approve Fee  
11 Procedures and Comments Regarding First Interim Fee Applications, Docket No. 4025,  
12 Entered September 27, 2019].

13 This Court filed a “Tentative Ruling” on October 6, 2019 [Docket Text Order]. A hearing  
14 was held October 7, 2019. The Fee Examiner and all parties filing responsive pleadings appeared  
15 and argued. The Court encouraged parties to work out their differences, suggesting that certain  
16 parties “meet and confer” over differences in the wording and structure of the Fee Examiner’s  
17 Protocol, originally filed with the Court as Docket No. 3762, on August 30, 2019 (“Original  
18 Protocol”).

## 19 20 **II. REVISED PROTOCOL**

21 Save the non-working travel issue, the Fee Examiner believes all open issues have been  
22 addressed by negotiating a Revised Protocol. The Fee Examiner is informed and believes that the  
23 Revised Protocol has been approved by all affected parties directed to meet and confer, which  
24 includes the debtors (as represented by Cravath, Swaine & Moore), the Official Creditors’  
25 Committee (as represented by Millbank LLP), the Tort Creditors’ Committee (as represented by  
26 Baker & Hostedler). The Fee Examiner and all other parties have agreed that Cravath, Swaine &  
27 Moore will file a copy of the Revised Protocol, and a copy of the Revised Protocol marked-to-  
28 show-changes from the Original Protocol, together with a Notice. The Revised Protocol will

1 reflect that the non-working travel issue remains “open,” pending the Court’s ruling. The Fee  
2 Examiner expects this Notice will be filed concurrently with this Reply.

3 The Office of the United States Trustee participated in all negotiations, but as of the filing  
4 of this Reply, has not signed the Revised Protocol. Because the Fee Examiner has always taken  
5 the position that the terms of any Protocol are subject to a claim that they do not track what  
6 Section 330(a) of the Bankruptcy Code requires (and the Revised Protocol explicitly so states), the  
7 Fee Examiner does not believe the U.S. Trustee’s formal approval is required, although it is  
8 certainly welcome.

### 9 10 **III. CAP ON NON-WORKING TRAVEL**

11 From the Fee Examiner’s perspective there remains only one open issue, and that is setting  
12 a cap on non-working travel. The Court’s Tentative Ruling stated there was “no reason to depart  
13 from the posted and long-standing two-hour allowance for travel.” Debtors’ counsel rejects the  
14 tentative and asks for a different cap (and the Revised Protocol indicates alternate language to be  
15 used depending on the Court’s final resolution), and for the reasons stated in the original motion,  
16 the Fee Examiner opposes their position.

17 The Fee Examiner has nothing to add to its original papers. He embraces the Court’s  
18 Tentative Ruling and requests that the Court adopt its Tentative Ruling as a final ruling.

### 19 20 **IV. U.S. TRUSTEE’S RESPONSE**

21 The U.S. Trustee’s extensive response raises a number of issues. The Fee Examiner does  
22 not believe any of these issues require a ruling at this time. The Fee Examiner further believes all  
23 issues raised by the U.S Trustee’s office have been and are subsumed in the normal negotiations  
24 anticipated by the Original and Revised Protocol. As announced at the Hearing, the Fee Examiner  
25 has reached several settlements with professionals in this case, and the issues raised by the U.S  
26 Trustee’s office have been considered. These settlements, however, were conducted as privileged  
27 settlement discussions under FRE §408. For this reason, the Fee Examiner does not believe he is  
28 permitted to comment further.

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3 **V. CONCLUSION**

4 The Fee Procedures Motion asked for a ruling on compensation for non-working travel.  
5 The Fee Examiner requests that the Court adopt and confirm its Tentative Ruling that the Court's  
6 existing chambers and district guidelines will apply to these cases.

7 The Fee Procedures Motion also asked for an order adopting certain scheduling  
8 procedures. No one has objected to these. The Fee Examiner has prepared a "Draft Order". The  
9 Draft Order adopts the scheduling provisions proposed in the Fee Procedures Motion. It also  
10 provides that the Court's ruling is that non-working travel time is disallowed except as provided in  
11 the existing Local Guidelines and Court Guidelines, and that any Revised Protocol shall contain  
12 only this language. The Draft Order is attached as Exhibit A hereto.

13 The Fee Examiner has not uploaded the Draft Order in order to preserve to the other parties  
14 their right to object. The Fee Examiner will upload the Draft Order only when the Court directs  
15 him to do so.

16 Respectfully Submitted,  
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20 DATED: October 24, 2019

SCOTT H. McNUTT

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22 By: /s/ Scott H. McNutt  
23 Scott H. McNutt  
24 Counsel to the Fee Examiner  
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**EXHIBIT A**

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Chapter 11

**[DRAFT] ORDER GRANTING FEE  
EXAMINER'S MOTION TO APPROVE  
FEE PROCEDURES**

Date: October 7, 2019  
Time: 1:30 p.m. PST  
Place: Courtroom 17  
16<sup>th</sup> Floor  
450 Golden Gate Avenue  
San Francisco, CA

Judge: Hon. Dennis Montali

22 Bruce A. Markell, the Court Appointed Fee Examiner (the "Fee Examiner"), in these  
23 jointly administered bankruptcy cases, filed his Motion to Approve Fee Procedures on September  
24 19, 2019 [Doc. No. 3950, Entered September 19, 2019] ("Fee Procedures Motion").

25 Three responsive pleadings to the Fee Procedures Motion were filed:

26 A. "Retained Professionals' Joint Response" [Retained Professionals' Joint Response  
27 to Motion to Approve Fee Procedures and Fee Examiner Protocol, Docket No. 4064, Entered  
28 October 1, 2019].

1 B. “Milbank Response” [Response of Millbank LLP, Counsel to the Official Committee  
2 of Unsecured Creditors, to the Fee Examiner’s Motion for Approval of Fee Procedures,  
3 Docket No. 4050, Entered October 1, 2019].

4 C. “U.S. Trustee’s Response” [U.S. Trustee’s Response to Motion to approve Fee  
5 Procedures and Comments Regarding First Interim Fee Applications, Docket No. 4025,  
6 Entered September 27, 2019].

7 This Court filed a “Tentative Ruling” on October 6, 2019 [Docket Text Order]. A hearing  
8 was held October 7, 2019. The Fee Examiner and all parties filing responsive pleadings appeared  
9 and argued. The Court encouraged parties to work out their differences, suggesting that certain  
10 parties “meet and confer” over differences in the wording and structure of the Fee Examiner’s  
11 Protocol, originally filed with the Court as Docket No. 3762, on August 30, 2019 (“Original  
12 Protocol”).

13 A hearing was held on October 7, 2019 at 1:30 p.m. Appearances are as noted in the  
14 record.

15 **Wherefore, in light of the foregoing, and good cause appearing therefor, It is Hereby**  
16 **Ordered that:**

- 17 1. The Fee Examiner’s Motion to set Fee Procedures is granted as provided herein.
- 18 2. As to any currently pending interim fee application (defined as any interim fee application  
19 filed before October 8, 2019):
  - 20 i. Only the Fee Examiner shall have authority to set a hearing date, and such dates  
21 shall be set under the provisions of Paragraph 9 of the Order Appointing Fee  
22 Examiner, i.e., after a final report, in coordination with the Debtors counsel, and  
23 grouped to advance judicial economy.
  - 24 ii. If a fee applicant and the Fee Examiner have reached a compromise, then a hearing  
25 should be set on the same basis and be coordinated with other fee hearings, so that  
26 hearings are grouped to advance judicial economy.  
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2 3. As to future cycles of interim fee applications, the following procedures should be ordered;

3 i. Interim fee applications shall be considered every four months, as provided for in  
4 the Interim Procedures Order. Under that order the first interim fee applications  
5 were to be filed by July 15, 2019. Future interim applications may be filed at four-  
6 month intervals commencing with that date. The next deadline to file an interim fee  
7 application shall be November 15, 2019, followed by March 15, 2020, and so on  
8 every four months. If an interim fee application is filed after the deadline, it will be  
9 deemed filed at the next interval. Each application will cover fees and expenses  
10 incurred through the end of the second full month preceding the deadline. For  
11 example, the applications filed November 15 shall cover time and expenses through  
12 September 30; the applications due March 15, 2020 will cover time and expenses  
13 through January 31, 2020.  
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16 ii. In the discretion of the Fee Examiner, the hearing dates on the interim applications  
17 will be grouped into three blocks as follows:

- 18       ▪ The “core” debtors’ counsel and committee counsel (Keller Benvenuti,  
19       Weil Gotschal, Cravath, Milbank, and Baker Hostetler);  
20       ▪ Debtors’ other legal counsel subject to fee examination; and  
21       ▪ Non-legal professionals.  
22

23 4. The Fee Examiner will determine when each block is set for hearing, attempting to do so in  
24 a manner respecting judicial economy and the efficient use of Fee Applicant’s time. The  
25 Fee Examiner may set each block on a different day. The goal is to group applications such  
26 that duplication of effort can be more easily detected (if it exists), and to also spread out  
27 the work of the Fee Examiner and his limited staff.  
28



1 5. The Court adopts its Tentative Ruling and specifically orders that any non-working travel  
2 time is disallowed except as provided in the Local Guidelines and this Court's own  
3 guidelines. Any Revised Protocol agreed to by the parties should provide "Non-working  
4 travel time is compensable as provided in the existing Local Rules and Court Guidelines."  
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7 **\*\*End of Order\*\***  
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